

June 30, 2022

Via Email to OCR@ed.gov and OCR.Chicago@ed.gov

U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, SW
Washington, DC 20202-1100

**Re: OCR Docket #05-22-1469 - Oak Park & River Forest District 200
Supplement to June 1, 2022, Complaint Concerning Racially Discriminatory
Policies of Oak Park and River Forest School District 200**

To Whom It May Concern:

The Defense of Freedom Institute for Policy Studies (“DFI”) is an independent, nonpartisan 501(c)(3) tax-exempt nonprofit organization dedicated to defending freedom and opportunity for every American family, student, entrepreneur, and worker, as well as to protecting their civil and constitutional rights at school and in the workplace.

Pursuant to the discrimination complaint resolution procedures of the U.S. Department of Education’s (“Department”) Office for Civil Rights (“OCR”), on June 1, 2022, DFI filed an administrative complaint¹ against Oak Park and River Forest School District 200 (“District 200”) in Oak Park, Illinois for discrimination on the basis of race, color, and national origin in programs or activities that receive federal financial assistance in violation of Title VI of the Civil Rights Act of 1964 (“Title VI”)² and the Equal Protection Clause of the 14th Amendment of the U.S. Constitution.

DFI files this supplemental complaint to make OCR aware of further information we have received demonstrating that discrimination by District 200 on the basis of race, color, and national origin goes far beyond the school district’s grading policy. District 200 has, in fact, established a general policy of impermissible discrimination that—as touted in materials posted on the Oak Park and River Forest High School (“OPRF”) website, presentation materials for District 200 Board of

¹ Letter from Robert S. Eitel, President, Defense of Freedom Institute for Policy Studies, to the U.S. Dept. of Ed., Office for Civil Rights, Jun. 1, 2022, at 2 (hereinafter “DFI Letter”), available at <https://dfipolicy.org/wp-content/uploads/2022/06/OCR-Complaint-OPRF-06.01.2022-signed.pdf>.

² 42 U.S.C. § 2000d *et seq.*



Education (“District 200 Board”) meetings, and other resources—subjects nearly all decisions made by OPRF administrators to a zero-sum review of whether such decisions will help one racial grouping (“people of color”) at the expense of white students, or vice versa.

District 200 Board and OPRF personnel published many of these policies years ago, and they pursue a District 200 Board policy that treats students differently based on race. DFI thus requests that OCR investigate not only District 200’s announcement of a race-based grading policy, but all of District 200’s activities pursuant to its racial equity policy, which, as explained below, impermissibly mandates the consideration of the race of students and the racial makeup of student groups across the school’s decision-making processes.

The day before DFI filed its initial complaint, OPRF published a statement on its website denying a news report that it plans to establish a “race-based grading system” for the 2022-2023 school year.³ On June 3, OPRFHS’s Assistant Superintendent for Student Learning, Dr. Laurie Fiorenza, denied any connection between “equitable grading practices” and race.⁴ In light of District 200’s policies, statements, and actions set out in detail below, DFI believes these denials are inaccurate and misleading not only to the public but also the Department and require OCR’s investigation.

District 200 Board’s Racial Equity Policy

Background and General Provisions

On April 25, 2019, the District 200 Board, “acknowledg[ing] that complex societal and historical factors, such as racism, contribute to inequities in our society,”⁵ adopted a “racial equity” policy.⁶ The policy states that its aim is “to address the systemic barriers to equity and access that disproportionately affect our students of color, who have experienced marginalization as shown through historical data, and to take into account how race plays out in our daily lives and in our

³Oak Park and River Forest High School, Statement Regarding Grading Practices, <https://www.oprfhs.org/news/1742090/statement-regarding-grading-practices>, May 31, 2022 (hereinafter “May 31 Statement”).

⁴ Quoted in F. Amanda Tugade, *One School Board Member Anticipated Equitable Grading Practices Would Be Misunderstood. He Was Right*, WED. J. OF OAK PARK AND RIVER FOREST, Jun. 3, 2022, available at <https://www.oakpark.com/2022/06/03/oprf-responds-to-fake-news-story/>.

⁵ Oak Park and River Forest H.S.D. 200, Policy Manual, 298 (2002) (hereinafter “District 200 Policy Manual”) (Section 7:12: Racial Equity Policy), available at <https://campussuite-storage.s3.amazonaws.com/prod/1558748/bd01c7ae-765f-11e9-9402-0a56f8be964e/2390643/b78a28aa-a921-11ec-8a55-0e37078c7be1/file/PolicyManual2022.pdf>.

⁶ *Id.* at 300.



education system.”⁷ In light of the negative impacts “[i]nstitutional racism, cultural biases, and other societal factors” have on “a student’s sense of belonging” and “disparities in achievement and graduation rates between students of different races,” the policy commits that the District 200 Board “will follow this policy in conducting its business and exercising its responsibilities.”⁸ It also “directs the Superintendent to establish, in accordance with this policy, written procedures and other guidance to implement this policy.”⁹

Incompatibility Between Equality and Race-based Equity

Critically, District 200’s race-based equity policy explicitly states that its pursuance of “equity” is incompatible with the principle of equality enshrined in Title VI and the U.S. Constitution’s Equal Protection Clause:

Educational equity and equality are not the same principles and should not be used interchangeably. Equality means treating all students the same regardless of differences. Equality can only succeed if all students start with the same needs and challenges. Equity rests on principles of justice and fairness and aims to remove barriers to provide each student the opportunity to benefit equally from the high-quality educational experience and outcomes that OPRFHS offers. OPRFHS recognizes that fostering educational equity may require allocating resources unequally to focus on barriers that may uniquely impact students of diverse backgrounds.¹⁰

Ignoring these legal mandates, the school district’s policy focuses on race-based equity, defining “Racial Equity” as “the systematic fair treatment of people of all races and ethnicities that allows equitable outcomes. Once racial and ethnic inequities are eliminated, race and ethnicity are not factors in outcomes.”¹¹ At its base, “equity” is thus a comparison of some racial and ethnic groups with others, rather than an individualized inquiry recognizing differences in each student across racial or ethnic groups.

The policy defines “Institutional Racism” as “social policies, practices, procedures, and/or discourse that benefit people who are white at the exclusion of people of color, often unintentionally.”¹² In this definition, District 200’s manual indicates the racial groupings that it

⁷ *Id.* at 298.

⁸ *Id.*

⁹ *Id.* at 299.

¹⁰ *Id.* at 298 (emphasis added).

¹¹ *Id.* at 299.

¹² *Id.*



will consider in pursuing “educational equity,” as well as the monolithic direction in which it plans to discriminate (*i.e.*, in favor of “people of color” and against “people who are white”).

Influence of Board Vice President Ralph Martire on Equity Policies

District 200 and OPRF’s policies regarding “racial equity” are driven by individuals like the District Board of Education’s Vice President Ralph Martire, a Professor of Public Policy at Roosevelt University in Chicago who served as a member of the Equity and Excellence in Education Commission established during the Obama Administration¹³ and Executive Director of the Illinois-based Center for Tax and Budget Accountability, whose purpose is “to identify evidence based reforms that promote social and economic justice.”¹⁴ When asked about his thoughts on a racial equity policy during his 2019 campaign for a seat on the Board, he answered, “I not only believe that a racial equity policy is necessary, I know that the research clearly shows that implementing a strategic, evidence-based approach to equity is one of the surest ways a school district can create a truly excellent learning environment for all students.”¹⁵ He wrote, “I believe my work experience over the last 15 years demonstrates that I can help facilitate the very type of systemic changes needed to address even issues fraught with polarizing emotions—like creating a racially equitable school system.”¹⁶

The District 200 Board fulfills Dr. Martire’s race-conscious vision by mandating 12 procedures and guidance for OPRF administrators to implement the school district’s race-based equity policy.¹⁷ The sections that follow describe the racial equity policy’s commands in the context of how OPRF leadership is implementing them in a wide range of areas affecting their students and faculty.

OPRF’s Strategic Plan for Racial Equity

In a statement posted to its website, OPRF manifests a lockstep commitment to the race-based equity policy created by the District 200 Board and lays out a plan for the broad implementation of the policy:

¹³ Roosevelt University, Ralph Martire, <https://www.roosevelt.edu/academics/faculty/profile/rmartire> (last visited Jun. 10, 2022).

¹⁴ *Ralph Martire*, WED. J. OF OAK PARK AND RIVER FOREST, Mar. 14, 2019, <https://www.oakpark.com/2019/03/14/ralph-martire/>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 299–300.



We believe it is our responsibility as an institution to identify and remove unconscious biases and system-wide barriers that inhibit success for all students. To achieve racial equity we must work to address the root causes of inequities, not just their manifestation. This includes eliminating policies, practices, attitudes, and cultural messages that reinforce or fail to eliminate different outcomes by race. The time for talking about systemic change is over. Oak Park and River Forest High School is committed to taking actions that will create equitable opportunities for all our students to achieve their full potential.¹⁸

At the District 200 Board's January 27, 2022 meeting, Dr. Patrick Hardy, OPRF's Executive Director of Equity and Student Success,¹⁹ presented a strategic plan, along with supporting documentation, to fulfill the Board's policy mandates and OPRF's public commitments to the principle of "racial equity."²⁰ One of the documents, labeled an "Action Plan," envisions that OPRF "will become a model school for racial equity within four years."²¹ To achieve this vision, the action plan calls for "building organizational capacity for engaging in racial equity work" through the following four projects: "Strengthen racial equity professional development programming"; "Establish an Office of Equity and Student Success Advisory Team"; "Develop and implement a resource allocation review process in alignment with board policy 7:12 [discussed below in the "Capital Expenditures" section]"; and "Implement comprehensive administrative equity procedures and analysis throughout the organization."²²

The documentation presented to the District 200 Board at its January meeting reveals the substantial staff commitment OPRF has devoted to the implementation of its "racial equity" vision. In a PowerPoint presentation entitled "Strategic Plan Update," Dr. Hardy lists 18 individuals as members of a "Development Team" charged with work, including "Racial Equity Protocols,

¹⁸ Oak Park and River Forest High School, Racial Equity at OPRF (hereinafter "Racial Equity at OPRF"), <https://www.oprfhs.org/racial-equity-program/index> (last visited Jun. 8, 2022).

¹⁹ An April 2022 news report indicates that Dr. Hardy will leave OPRF's equity office in July 2022 for the principal position at Hinsdale South High School in Darien, Illinois. *Michael Romain, OPRF Equity Director to Leave for Principal Position*, WED. J. OF OAK PARK AND RIVER FOREST, Apr. 6, 2022, available at <https://www.oakpark.com/2022/04/06/oprf-equity-director-to-leave-for-principal-position/>.

²⁰ Oak Park and River Forest High School, Agenda Item Details: Jan 27, 2022 – Regular Board of Education Meeting (Virtual), <https://go.boarddocs.com/il/oprfhs/Board.nsf/vpublic?open> (last visited Jun. 7, 2022).

²¹ Oak Park and River Forest High School, Office of Equity and Student Success: Action Plan, at 1 (hereinafter "OPRF Equity Action Plan"), available at [https://go.boarddocs.com/il/oprfhs/Board.nsf/files/CAS4JM0BCC1A/\\$file/Office%20of%20Equity%20and%20Student%20Success%20Action%20Plan%20\(003\).pdf](https://go.boarddocs.com/il/oprfhs/Board.nsf/files/CAS4JM0BCC1A/$file/Office%20of%20Equity%20and%20Student%20Success%20Action%20Plan%20(003).pdf).

²² *Id.* at 2.



Onboarding Content, Culturally Responsive and Relevant Teaching and Learning, [and] Monthly Opt-in.”²³ The slides also indicate that OPRF provides two faculty advisors to an initiative called S.A.F.E., which the presentation describes as “a student-led group advocating for equity within the school and community” that “serves as the Advisory Committee to [Dr. Hardy’s] Office of Equity and Student Success.”²⁴

In a document labeled “Strategic Plan 2020 – 2025,” OPRF identifies as one of its “Long-Term Strategic Goals” the full implementation of its “racial equity procedures throughout the organization” by June 2023.²⁵ As part of its fulfillment of this goal, OPRF commits to “[a]nnually report progress to the Board for accountability and modification in the ongoing pursuit of ensuring equitable academic and social outcomes for BIPOC (Black, Indigenous, People of Color) students.”²⁶

Racial Equity Analysis Tool

OPRF’s long-term strategic plan indicates that, “[w]hile Equity is one of the individual goals in this plan, all work of the district should be viewed through the filter of producing more equitable outcomes for students.”²⁷ For all work of the district, the plan indicates that decision-makers should “keep at the forefront” the following questions: “[W]ho are the racial/ethnic groups affected by a particular policy, procedure, program, etc.? Will disparities remain or be made worse? What might the unintended consequences be? What about this decision presents barriers to more equitable outcomes, and how can they be removed?”²⁸ To consider these questions, OPRF has developed a Racial Equity Analysis Tool (“REAT”) with the aim of filtering all school and district decisions through a race-centered process.

²³ Dr. Patrick Hardy, Oak Park and River Forest High School District 200, Strategic Plan Update ~ Priority 1: Racial Equity, at 13, *available at* [https://go.boarddocs.com/il/oprfhs/Board.nsf/files/CAS4JP0BCC39/\\$file/BOE%20Report_Strategic%20Plan%20Update_Priority%201_Racial%20Equity.pdf](https://go.boarddocs.com/il/oprfhs/Board.nsf/files/CAS4JP0BCC39/$file/BOE%20Report_Strategic%20Plan%20Update_Priority%201_Racial%20Equity.pdf).

²⁴ *Id.* at 14.

²⁵ Oak Park and River Forest High School District 200, Strategic Plan 2020 – 2025, at 3 (last updated Winter 2021) (hereinafter “Strategic Plan 2020 – 2025”), *available at* <https://campussuite-storage.s3.amazonaws.com/prod/1558748/bd01c7ae-765f-11e9-9402-0a56f8be964e/2251258/a2764622-9baf-11eb-aa10-0a362c75f02f/file/OPRF%20D200%20Strategic%20Plan.pdf>.

²⁶ *Id.*

²⁷ *Id.* at 12.

²⁸ *Id.*



The District 200 Board established the parameters of this comprehensive tool in its “racial equity” policy: “The administrative procedures shall include the use of a racial equity impact assessment tool to help decision makers consider racial equity when assessing policies, procedures, professional development, and other practices and choose options that mitigate the risk of racial inequity, implicit bias, and other unintended consequences.”²⁹ The sweep of this race-based equity review extends to “OPRFHS practices, procedures, and programs to consider whether they result in over- or under-representation of any group of students on the basis of race.”³⁰ The policy categorically declares that, “[i]f such disparity is found, the District will consider revision or elimination of the practice.”³¹

In a document posted to its website, OPRF explains the purpose of REAT as follows:

By using [REAT], District 200 will provide a common language and protocol to evaluate *all policies, programs, practices, and significant decisions*. The purpose of the tool is to mitigate and eliminate the presence of racial inequity, implicit bias, and other unintended consequences of decision making. [REAT] is utilized to consistently, deliberately, and thoroughly apply a rigorous equity lens to the decision making process in order to remove structural barriers that impede access to opportunities for all students, with particular attention to removing barriers for those student groups who have been historically and currently marginalized.³²

A separate OPRF document confirms that REAT “provides a *required* set of guiding questions to determine if existing and proposed policies, resource allocations, curricular programming, [sic] professional development are likely to close the opportunity gap for marginalized populations in District 200.”³³ This document describes the procedure for using REAT, including the submission of a REAT form to the Executive Director of Equity for review by “the District Equity Leadership

²⁹ District 200 Policy Manual, *supra* note 5, at 299.

³⁰ *Id.*

³¹ *Id.*

³² Racial Equity Policy 7:12, Procedures, at 1 (2020) (hereinafter “Racial Equity Policy 7:12, Procedures”) (emphasis added), available at https://campussuite-storage.s3.amazonaws.com/prod/1558748/bd01c7ae-765f-11e9-9402-0a56f8be964e/2242777/12d5b6da-8b22-11eb-a66b-0ec8fc0ddee1/file/Racial%20Equity%20Policy%20Procedures%207_12%20202020627%20Final.pdf.

³³ District 200 Racial Equity Analysis Tool, 1 (emphasis added), available at https://campussuite-storage.s3.amazonaws.com/prod/1558748/bd01c7ae-765f-11e9-9402-0a56f8be964e/2242778/2d6e097a-8b22-11eb-9f95-0ec8fc0ddee1/file/District%20200%20Racial%20Equity%20Analysis%20Tool_WS.pdf.



Team and the Executive Cabinet.”³⁴ OPRF indicates that it adapted REAT in part from an organization called Race Forward,³⁵ whose projects seek to “bring[] systemic analysis and an innovative approach to complex race issues to help people take effective action toward racial equity” and to “catalyze[] community, government, and other institutions to dismantle structural racial inequity and create equitable outcomes for all.”³⁶

In his presentation to the District 200 Board on January 27, 2022, OPRF’s Executive Director of Equity and Student Success Dr. Hardy declared his office’s vision of the comprehensive scope of REAT and other “racial equity policy” tools in examining decisions across OPRF, including in grading analysis:

Equity is everywhere Everything is about equity. . . . And Dr. Fiorenza has been doing a phenomenal job **racializing** our work, the **racialization** of assessment [W]e have to not let the word equity become a siloed thing that is a side conversation, but that it is permeating our organization.³⁷

The following sections will review a non-exhaustive range of areas where OPRF, true to the words of Dr. Hardy and at the behest of the District 200 Board, is “racializing” school policies, practices, and decisions in line with a vision of “racial equity” and in violation of Title VI and the Federal Constitution. As we shall see below, this “racialization” is unlawful and racially discriminatory because it is rooted in policies that explicitly seek to divide the resources offered to and treatment of students based on race.

Equitable Grading

DFI’s June 1 complaint described in detail District 200’s conclusion that “[t]raditional grading practices perpetuate inequities and intensify the opportunity gap”³⁸ and its use of the REAT to

³⁴ Racial Equity Policy 7:12, Procedures, *supra* note 32, at 2.

³⁵ *Id.* at 3.

³⁶ Race Forward, About Race Forward, <https://www.raceforward.org/about> (last visited Jun. 8, 2022).

³⁷ Dr. Patrick Hardy’s Presentation at Oak Park and River Forest High School, D200 Board of Education Regular Meeting – Jan 27, 2022, https://www.youtube.com/watch?v=_g952fOIo&list=PLy60NMMcuTof1uE8nBnG2QrB9wYj1jy_r&index=15, at 2:13:23 mark.

³⁸ DFI Letter, *supra* note 1, at 2 (quoting Oak Park and River Forest High School District 200, Strategic Plan Priority 2: Transformative Education, Professional Development & Grading, May 26, 2022, at 9 (hereinafter “Strategic Plan”), available at [https://go.boarddocs.com/il/oprfls/Board.nsf/files/CELJGA4D1599/\\$file/Professional%20Development%20and%20Grading%20BOE%20Presentation.pdf](https://go.boarddocs.com/il/oprfls/Board.nsf/files/CELJGA4D1599/$file/Professional%20Development%20and%20Grading%20BOE%20Presentation.pdf)).



implement the practice of “grading with equity.”³⁹ As described above, District 200’s protests to the contrary are unavailing because, to state it simply, the District’s equity policy defines equity as a racially based concept that includes, according to the District’s own documents, the practice of “allocating resources unequally” on the basis of race.⁴⁰ Therefore, by the District’s own terminology, “grading with equity” will include differentiation of practice based on whether a student is a “person of color” or white.

DFI has discovered additional District 200 resources that make plain the illegal racialization of grading practices entailed in OPRF’s plans for “grading with equity” for Fall 2023.⁴¹ In OPRF’s long-term strategic plan, the school lists the following as a focus for 2020–21: “By fall 2021, conduct a review of assessment and grade-point average practices, to include best practices in equitable grading”⁴² In an apparent attempt to instill such “best practices,” a PowerPoint presentation to the District 200 Board on March 10, 2022, includes a “Prototype Example” of a “Formative Assessment Analysis Tool” that allows users to sort data on achievement grouped by race.⁴³ In an obvious indication that District 200 policy requires consideration of a student’s race, the tool includes a “Student Details Table” that lists the name of each student, then their race, prior to any details about the assessment of each student.⁴⁴

According to the presentation, OPRF’s “data strategy plan” for assessing students “advances racial equity through intentionally collecting and disaggregating data across racial lines and using the evidence to respond to individual students [sic] learning needs through intentional changes to instructional practices.”⁴⁵ OPRF’s breakdown of student data by race is clearly not intended to respond to individual needs, but rather to inform OPRF’s race-based equity policies treating students differently based on race.

Capital Expenditures

District 200’s “racial equity” policy declares that “[t]he administrative procedures” issued by OPRF to implement the policy “shall afford flexibility to differentiate resource allocation on the

³⁹ Strategic Plan, *supra* note 38, at 8, 10.

⁴⁰ District 200 Policy Manual, *supra* note 5, at 298.

⁴¹ See DFI Letter, *supra* note 1, at 2.

⁴² Strategic Plan 2020 – 2025, *supra* note 25, at 5.

⁴³ Oak Park and River Forest High School District 200, Strategic Plan Priority 2: Transformative Education, Data Driven Instruction, at 15 (2022), available at [https://go.boarddocs.com/il/oprfhs/Board.nsf/files/CC7MJ95B7026/\\$file/Final%20Data%20Strategy%20Plan%20BOE%20Presentation.pdf](https://go.boarddocs.com/il/oprfhs/Board.nsf/files/CC7MJ95B7026/$file/Final%20Data%20Strategy%20Plan%20BOE%20Presentation.pdf).

⁴⁴ *Id.*

⁴⁵ *Id.* at 16.



basis of student need in an effort to promote and provide equity in education while complying with all requirements of relevant state and federal law.”⁴⁶ Pursuant to this command, which OPRF interprets as charging the school “with disrupting structures that create inequities in our school system,” OPRF has stated that “[t]he principles of equity shall guide funding decisions in District 200.”⁴⁷ Accordingly, “[a]ny decisions made regarding the allocation of resources within [OPRF] shall be filtered through the [REAT].”⁴⁸

On February 25, 2021, OPRF personnel presented to the District 200 Board a PowerPoint presentation that, in part, considered various capital expenditures in light of the question “Does [the proposed expenditure] align with the strategic plan goal on racial equity?”⁴⁹ The presentation links to a document entitled “Capital Expenditure sheet,” which breaks down various expenditures into three categories: “Liability Risk,” “Financial Risk,” and “Accessibility and/or Upgrades.”⁵⁰ For each category, the chart considers whether the project is compatible with OPRF’s strategic plan goal on racial equity.⁵¹

“Liability Risk” projects include “Fire suppression sprinkler system – auditorium” and roofing projects.⁵² According to the chart, OPRF personnel consider some of these projects necessary to comply with the law and some “urgent due to leaking and water damage.”⁵³ Nevertheless, OPRF dutifully considers whether these “urgent” projects comply with District 200’s race-based equity plan, concluding: “Yes. There has been an inentinal [sic] effort to seek out minority, women, and disadvantaged business enterprises in the bidding process and lobar [sic] pool for the capital improvement projects.”⁵⁴

“Financial Risk” projects include upgrading the conditions of OPRF’s tennis courts and replacing the turf on a field used by the field hockey, lacrosse, and soccer teams.⁵⁵ According to the chart, OPRF finds that neither project aligns with the strategic plan goal on racial equity because tennis, field hockey, and lacrosse have “historically” involved “higher levels” of participation by white

⁴⁶ District 200 Policy Manual, *supra* note 5, at 299.

⁴⁷ Racial Equity Policy 7:12, Procedures, *supra* note 32, at 4.

⁴⁸ *Id.*

⁴⁹ 2020–2021 Superintendent Goal #2, at 9, available at [https://go.boarddocs.com/il/oprfhs/Board.nsf/files/BYDUJ47C39A0/\\$file/20210225%20BRD%20Superintendent's%20Goals%20-%20%232.pdf](https://go.boarddocs.com/il/oprfhs/Board.nsf/files/BYDUJ47C39A0/$file/20210225%20BRD%20Superintendent's%20Goals%20-%20%232.pdf).

⁵⁰ *Id.* at 10 (accessible by clicking chart to access a two-page pdf).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*



students.⁵⁶ Therefore, upgrading these spaces “would mean that we are prioritizing [sic] spaces that advantage White students over spaces that students of color occupy.”⁵⁷ In the column labeled “Evidence,” the chart contains what appear to be links to the demographics of students in the tennis and field hockey programs.⁵⁸ In a column labeled “Recommendations/Next steps (timeframes),” OPRF indicates that, for each project, it will examine race data with the school’s athletic director and coaches, strategize how to increase “student of color participation” in each program, and “[r]eview racially disaggregated [sic] data on athletics [sic] and student activities to determine how capital improvement can be equitably allocated.”⁵⁹

At the February 25 meeting, the OPRF presenter explained that, while the spending on the tennis and turf fields were necessary “from an instructional standpoint,” “we also have to be mindful and really understand from an extracurricular standpoint, who are we . . . **what’s the racial makeup in terms of teams . . .** the tennis team, our field hockey team, also, the lacrosse team . . .”⁶⁰ The presenter also said OPRF would have to examine “how we are prioritizing our . . . expenditures for these areas relative to other spaces that may be occupied by students of color, so there’s something to be mindful of and thinking about going forward as we are building capital.”⁶¹ He stated that reviewing “data, or **racialized data**, in these areas” would give OPRF and its athletic director the opportunity to “think of other sports, clubs, activities, and groups that we can look at those racial demographic breakdowns and get a better understanding of the organization to allocate more funds in spaces that are occupied by students of color.”⁶²

Mentorship Program

At the District 200 Board meeting on January 27, 2022, OPRF offered an addendum to the materials it presented labeled “Racial Equity Initiatives Overview.”⁶³ One initiative listed in the

⁵⁶ *Id.* OPRF notes that “soccer has had a more diverse representation of the student body over time,” *id.*, but, for unexplained reasons, it appears this fact was not enough to overcome the proportion of white students in the other sports when it came to complying with the strategic plan.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Oak Park and River Forest High School, D200 Board of Education Regular Meeting – Feb. 25, 2021, <https://www.youtube.com/watch?v=oiAR4ZDhktk>, at 3:11:47 mark (emphasis added).

⁶¹ *Id.* at 3:16:20 mark.

⁶² *Id.* at 3:16:35 mark (emphasis added).

⁶³ Department of Equity and Student Success, Racial Equity Initiatives Overview, Jan. 27, 2022 (hereinafter “Racial Equity Initiatives Overview”), available at [https://go.boarddocs.com/il/oprfls/Board.nsf/files/CAYPQC63E64B/\\$file/20220127%20Reg%20OESS%20Initiatves%20Metrics%20and%20Research.pdf](https://go.boarddocs.com/il/oprfls/Board.nsf/files/CAYPQC63E64B/$file/20220127%20Reg%20OESS%20Initiatves%20Metrics%20and%20Research.pdf).



materials is “Motivational Mentorship,” for which the column “Research Synopsis” states, “Group mentorship is derived from West African traditions and mitigates the imbalanced ratio of mentor to mentees, views participants within the context of the group or community, and relies on the importance of the collective/community subscribed to in African and other non-European cultures.”⁶⁴

According to the presentation by the coordinator of the Motivational Mentorship Program to the District 200 School Board on January 27, the mentorship program is “dedicated to the success and security of *students of color* as they explore the many ways of knowing in academia . . . We lean into transformative learning and care via culturally relevant teachings that inform our daily plus weekly practices, inspiring critical discourse, vulnerability, authenticity, and joy.”⁶⁵

Professional Development, Race-based Equity Coaching, and Discipline

District 200 Board Policy

District 200’s race-based equity policy requires OPRF to include in its administrative procedures “a plan to provide professional development to strengthen employees’ knowledge and skills of strategies for eliminating bias and disparities in student achievement and district hiring practices.”⁶⁶ The policy requires professional development involving “strategies to limit and/or mitigate the harm of such disparities; implicit bias in hiring practices; cultural responsiveness; the historical roots of institutional racism; and equitable, inclusive, and anti-oppressive methods.”⁶⁷ The policy mandates that implementing procedures “include a plan to provide alternatives to punitive discipline, including a focus on social-emotional learning and restorative practices.”⁶⁸

Professional Development Plan

As part of its ongoing race-based equity work pursuant to this policy, OPRF launched a “six-year professional development plan to eliminate racial bias in classroom practices,” in which “approximately 40 teachers received intensive training as Collaborative Action Research for

⁶⁴ *Id.* at 1.

⁶⁵ Shannon Perryman, coordinator of Motivational Mentorship Program, Oak Park and River Forest High School, D200 Board of Education Regular Meeting – Jan 27, 2022, https://www.youtube.com/watch?v=_g952fOIo&list=PLy60NMMcuTof1uE8nBnG2QrB9wYj1jy_r&index=15, at 1:56:15 mark (emphasis added).

⁶⁶ District 200 Policy Manual, *supra* note 5, at 299-300.

⁶⁷ *Id.* at 300.

⁶⁸ *Id.*



Equity (CARE) team leaders.”⁶⁹ These teachers studied a number of texts oriented toward race-based equity principles, including *What Does It Mean to Be White: Developing White Racial Literacy* by Robin DiAngelo; *Despite the Best Intentions: How Racial Inequality Thrives in Good Schools* by Amanda E. Lewis and John B. Diamond; and *Everyday AntiRacism: Getting Real about Race in School*, edited by Mica Pollock.

OPRF then assigns every teacher in the school to small groups with a CARE team leader, and they must “spend[] five years analyzing their curriculum, teaching methods, practices, processes, and classroom relationships through a racial lens,” ensuring that they “develop healthy racial consciousness” with the goal of “eliminat[ing] racial bias in instruction.”⁷⁰

“Racial Equity Coaching”

A related OPRF race-based equity initiative is called “Racial Equity Coaching,” which the school describes as follows: “Coaching for equity means recognizing inequities in schools and classrooms and knowing how to address them. . . . Teachers who receive coaching improve skills and gain better concepts. They also improve their lesson planning, culturally responsive behaviors, and self-efficacy.”⁷¹

“Alternatives to Punitive Discipline”

Under the District 200 School Board’s policy mandate to “provide alternatives to punitive discipline,”⁷² OPRF has declared that it will pursue “an approach to discipline that is grounded in restorative practices and social-emotional learning in order to focus on repair, healing, reconnection and reduce racial discipline disparities.”⁷³ An OPRF initiative called “Trauma-Informed Climate and Culture” aims to implement “trauma-informed care in school discipline practices” to “acknowledge and center the unique forms of trauma experienced by Black and Brown students.”⁷⁴ (Underscoring its racially discriminatory approach to discipline, the initiative assumes that students who are not black or brown do not require trauma-informed care but that students who are black and brown require it.) OPRF praises this concept for “allow[ing] teachers to view problematic behaviors through inclusion and equity lenses rather than individual

⁶⁹ Oak Park and River Forest High School, Ongoing Racial Equity Work, <https://www.oprfhs.org/racial-equity-program/ongoing-work> (hereinafter “Ongoing Racial Equity Work”) (last visited Jun. 8, 2022).

⁷⁰ *Id.*

⁷¹ Racial Equity Initiatives Overview, *supra* note 63, at 5–6 (citations omitted).

⁷² *Supra* note 68.

⁷³ Racial Equity Policy 7:12, Procedures, *supra* note 32, at 10.

⁷⁴ Racial Equity Initiatives Overview, *supra* note 63, at 3.



deficits.”⁷⁵ Citing an article from *Children & Schools* called “Keeping Race at the Center of School Discipline Practices and Trauma-Informed Care: An Interprofessional Framework,” OPRF argues that “[c]ombining trauma-informed care with other key leadership practices can improve efforts to dismantle institutional racism and address trauma resulting from race and socioeconomics with Black and Latinx students. . .”⁷⁶

In addition to abstract teaching strategies directed specifically at students of a certain racial grouping, OPRF has demanded concrete results in reducing the discipline disparity between what it calls “Black and Brown students” and white students. In the 2019–20 section of its long-term strategic plan, the school lists its arbitrary discipline goals and progress under “Transformative Education” as follows: “By June 2020, decrease by 10% the disparities between overall school demographics and (1) students receiving at least one discipline referral and (2) students receiving more than five tardies.”⁷⁷ The document indicates that the goal is “50% completed” and calls for it to be “[c]arr[ied] over to new year.”⁷⁸

Hiring Practices

In addition to the hiring practices noted in District 200’s policies quoted above, the Board’s race-based equity policy requires OPRF to develop “a plan to recruit, employ, support, retain, and develop racially and linguistically diverse and culturally responsive administrative, instructional, and support personnel throughout its divisions and departments.”⁷⁹

It appears that OPRF has interpreted this instruction as an opportunity to implement racial quotas in the hiring of teachers and other employers. In the 2019–20 section of its long-term strategic plan, the school lists its hiring goals and progress under “Transformative Leadership” as follows: “By July 2024, increase representation of minority teachers to 35% of the overall faculty. 55%

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Strategic Plan 2020 – 2025, *supra* note 25, at 7.

⁷⁸ *Id.*

⁷⁹ District 200 Policy Manual, *supra* note 5, at 299.



completed. Carry over to new year.”⁸⁰ For all employees, the goal for July 2024 was a more-ambitious 50% minority representation, with “65% completed.”⁸¹

Curricula and “Detracking”

Race-based Equity in Curriculum Planning

District 200’s policy requires OPRF to produce “a plan to intentionally seek out and consider diverse perspectives of students, faculty, and staff when developing and implementing teaching and learning practices and curriculum.”⁸² The policy calls for the school to “address selection of classroom materials, assessments, and teaching that reflect diversity and encourage understanding and appreciation of unique cultures, classes, languages, and ethnicities.”⁸³

One way in which OPRF attempts to implement these mandates is the “Racial Equity Course” initiative, based on the argument that “[c]urricula and strategies designed to raise students’ critical and racial consciousness can create a link between the classroom and students’ lived realities while challenging anti-Blackness structures.”⁸⁴ OPRF policies make clear that “equity principles set by the District Equity Leadership Team” and the REAT guide review and design of curricula in this manner,⁸⁵ with benefits that “show promise, particularly for African American and Latinx students.”⁸⁶

“Detracking” Students

In the 2019–20 section of its long-term strategic plan, OPRF again arbitrarily establishes a racial quota of decreasing by half the gap between white students and “our Black-African American and Latinx students, as measured by the percentage of students who earn honors credit during freshman

⁸⁰ OPRF Strategic Plan 2020 – 2025, *supra* note 25, at 8. OPRF confirms this goal on its website under the heading “Ongoing Racial Equity Work”: “The demographics of our teaching staff, which is about 80 percent white, do not reflect the demographics of our students, who are 44 percent young people of color. The district’s strategic plan calls for increasing representation of minority teachers to 35% of the overall faculty by July 2024.” Ongoing Racial Equity Work, *supra* note 69.

⁸¹ OPRF Strategic Plan 2020 – 2025, *supra* note 25, at 8.

⁸² District 200 Policy Manual, *supra* note 5, at 300.

⁸³ *Id.*

⁸⁴ Racial Equity Initiatives Overview, *supra* note 63, at 4 (citations omitted).

⁸⁵ Racial Equity Policy 7:12, Procedures, *supra* note 32, at 12.

⁸⁶ *Id.* (citations omitted).



year.”⁸⁷ For June 2024, the strategic plan sets the same race-based quota for every grade of high school.⁸⁸ In each case, OPRF states that the goal is “50% completed” and should be “[c]arr[ied] over to new year.”⁸⁹

Perhaps dismayed by a lack of progress toward these goals, and in pursuit of what it calls “Equitable Excellence,” OPRF retreated from any pretense of academic rigor, making the following announcement in 2021: “In 2022-2023, to increase access to rigorous coursework for all students, the high school will eliminate separate college-prep and honors level classes for freshman English, science, history, and world languages, replacing them with a single, rigorous, high-level honors curriculum for all.”⁹⁰ OPRF states that its goal in “detracking” the freshman curriculum “is for race and ethnicity to cease being predictors of enrollment in high-level course work, so that students earning honors and AP credits will mirror the demographics of our overall population.”⁹¹ Confronted by the question posed by some community members regarding why it will deny students and parents the opportunity to choose their classes, OPRF answers, “Choice is essentially what we currently have in place. The shortcoming with choice is that it does not lead to more equitable outcomes, something this [sic] is a core value and goal of our school district.”⁹²

Analysis

According to the 14th Amendment to the U.S. Constitution, “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”⁹³ Title VI states, “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”⁹⁴ District 200’s policies requiring personnel to consider every aspect of its programs, policies, and significant decisions in terms of their impacts on two different racial groups – “people of color” versus white people – are contrary to both provisions.⁹⁵ Indeed, the

⁸⁷ OPRF Strategic Plan 2020 – 2025, *supra* note 25, at 7.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Oak Park and River Forest High School, Equitable Excellence: Freshman Curriculum Restructuring, <https://www.oprfhs.org/academics/access-for-all> (last visited Jun. 8, 2022).

⁹¹ Oak Park and River Forest High School, Questions from Community Meetings, <https://www.oprfhs.org/academics/questions-from-community-meetings> (last visited Jun. 8, 2022).

⁹² *Id.*

⁹³ U.S. CONST. amend. XIV, § 1.

⁹⁴ 42 U.S.C. § 2000d.

⁹⁵ Because the Supreme Court has concluded that the prohibition of racial classifications by Title VI is co-extensive with the same prohibition by the Equal Protection Clause, *see Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 287 (1978) (opinion of Powell, J.), *cited by Grutter v. Bollinger*,



Supreme Court has repeatedly rejected the use of race as a factor in affording educational opportunities.⁹⁶

The U.S. Supreme Court has held that, “when the government distributes burdens or benefits on the basis of individual racial classifications,” it will review the action under strict scrutiny.⁹⁷ To satisfy this standard of review, the government must show that its use of racial classifications “is ‘narrowly tailored’ to achieve a ‘compelling’ government interest.”⁹⁸

One of the two interests the Supreme Court has recognized as compelling in this context is “remedying the effects of past intentional discrimination.”⁹⁹ However, the Court has been clear that this interest does not justify racial classifications for the sake of correcting for general “societal discrimination” that does not spring from government action.¹⁰⁰ In this case, of course, District 200 is explicitly not imposing racial classifications for the purpose of alleviating the impacts of intentional discrimination. The school district’s race-based equity policy states that its purpose is to correct for “[i]nstitutional racism, cultural biases, and other societal factors.”¹⁰¹ District 200’s policy defines “institutional racism” as “social policies, practices, procedures, and/or discourse that benefit people who are white at the exclusion of people of color, *often unintentionally*.”¹⁰² This is not the kind of intentional discrimination that justifies race-conscious government action under Supreme Court precedent.

The second interest the Supreme Court has recognized as compelling is “diversity in higher education.”¹⁰³ District 200’s policies and actions do not qualify under this interest for the simple reason that OPRF is not an institution of higher education, which the Court has held “occupy a special niche in our constitutional tradition” due to “the expansive freedoms of speech and thought

539 U.S. 306, 343 (2003), we will focus in this analysis solely on the Court’s Equal Protection Clause jurisprudence.

⁹⁶ *Brown v. Board of Education*, 347 U.S. 483 (1954); *Parents Involved in Cmtv. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007).

⁹⁷ *Parents Involved*, 551 U.S. at 720 (citing *Johnson v. California*, 543 U.S. 499, 505–506 (2005); *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003); *Adarand Constructors v. Peña*, 515 U.S. 200, 224 (1995)).

⁹⁸ *Id.* (citing *Adarand*, 515 U.S. at 227).

⁹⁹ *Id.*

¹⁰⁰ *Parents Involved*, 551 U.S. at 731–732 (citing *Shaw v. Hunt*, 517 U.S. 899, 909–910 (1996); *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 498–499 (1989); *Wygant v. Jackson Bd. of Education*, 476 U.S. 267, 276 (1986) (plurality opinion); *id.* at 288 (O’Connor, J., concurring in part and concurring in the judgment)).

¹⁰¹ District 200 Policy Manual, *supra* note 5, at 298.

¹⁰² *Id.* at 299 (emphasis added).

¹⁰³ *Parents Involved*, 551 U.S. at 722.



associated with the university environment.”¹⁰⁴ And, of course, District 200’s racial classifications have no bearing on the diversity of the OPRF student body. It is safe to say that, no matter the date on which the school system achieves its goal of equity by closing all perceived gaps between one racial group and another, the student body will remain just as racially diverse as it was the day before.

Moreover, the Supreme Court has only recognized a diversity interest as compelling when the institution treats each student or applicant as an individual “and not simply as a member of a particular racial group.”¹⁰⁵ In direct contrast, in funding considerations and grading and discipline policies, OPRF is considering students not as individuals, but as members of racial groups. This unconstitutional practice is emphasized by the listing of each student’s race directly next to his or her name in the Data Driven Instruction table prototype produced by the school district,¹⁰⁶ indicating that the most important factor to District 200 in the assessment of each student is his or her race. This fact is also borne out in initiatives ranging from “Racial Equity Coaching” to “Motivational Mentorship,” where the explicit goal is to target “people of color” with unique interventions based on how OPRF classifies them according to race.

In addition to the fact that District 200 cannot assert an interest the Supreme Court has found to be compelling to justify its racial classifications, it cannot show that its racial equity programs and practices are narrowly tailored to any interests it might assert. The purpose of the Supreme Court’s narrow tailoring analysis in the case of racial classifications is “to ensure that the use of racial classifications was indeed part of a broader assessment of diversity, and not simply an effort to achieve racial balance, which the Court [has] explained would be ‘patently unconstitutional.’”¹⁰⁷

OPRF’s policies engage in repeated and comprehensive racial balancing. The school has explicitly considered the racial makeup of athletic teams and other groups in its decisions on capital expenditures.¹⁰⁸ The school has set specific targets (*i.e.*, quotas) for reducing racial disparities in its hiring, grading, and discipline policies, considering only the race of students and teachers without considering individual factors underlying each decision.¹⁰⁹ Such policies fail to recognize the unique characteristics of each individual and, due to their blunt, categorical treatment of students as “people of color” or white people, are not narrowly tailored to achieve any interest of helping individual students succeed academically, socially, athletically, artistically, or otherwise. Therefore, District 200’s racial equity policies cannot survive strict scrutiny.

¹⁰⁴ *Grutter*, 539 U.S. at 329, 334, quoted in *Parents Involved*, 551 U.S. at 724.

¹⁰⁵ *Parents Involved*, 551 U.S. at 722.

¹⁰⁶ *Supra* note 44.

¹⁰⁷ *Parents Involved*, 551 U.S. at 723 (quoting *Grutter*, 539 U.S. at 330).

¹⁰⁸ *Supra* Capital Expenditures discussion, at 10–11.

¹⁰⁹ Strategic Plan 2020 – 2025, *supra* note 25.



District 200 policies imposing a regime of racial discrimination cannot be justified by arguing that such discrimination is motivated by a benign desire to help minorities. As the Supreme Court has explained:

The Court's emphasis on "benign racial classifications" suggests confidence in its ability to distinguish good from harmful governmental uses of racial criteria. History should teach greater humility. . . . "[B]enign" carries with it no independent meaning, but reflects only acceptance of the current generation's conclusion that a politically acceptable burden, imposed on particular citizens on the basis of race, is reasonable.¹¹⁰

Whether or not the aim of District 200 is "benign" in attempting to help minorities the District considers to be in need of assistance, its policies and practices considering race in its assessment, distribution of resources, and consideration of whether to adopt, maintain, or cut specific programs are still unconstitutional due to their blatant preoccupation with the race of the students they are supposedly helping. As we explained in our initial complaint,¹¹¹ these policies' obsession with race helps no one—other than perhaps the people employed to create and implement them.

If District 200's aim is truly to help students who have fallen behind in academics due to circumstances beyond their control, the appropriate course is not to use race clumsily as the indicator of whether the student should receive more help and resources, but to provide supports tailored to each student as an individual, no matter his or her race, color, or national origin.

District 200's Denial of "Race-Based" Policy

On May 31, 2022, OPRF published a "Statement regarding grading practices" on its website denying a report in a local digital news publication that OPRF plans to establish a "race-based grading system" for the 2022–2023 school year.¹¹² The statement declares, "OPRFHS does not, nor has it ever had a plan to, grade any students differently based on race."¹¹³ Dr. Laurie Fiorenza,

¹¹⁰ *Metro Broad. v. FCC*, 497 U.S. 547, 609–610 (O'Connor, J., dissenting), quoted with approval in *Parents Involved*, 551 U.S. at 742.

¹¹¹ DFI Letter, *supra* note 1, at 5 ("[T]he policy relies on the tired, wrong-headed justification of discrimination on the basis of race: students of particular races, nationalities, and ethnic backgrounds need special treatment by schools and other institutions in order to succeed. This justification not only stigmatizes and patronizes students but also sends the message that they can succeed only with the help of benevolent patrons.") (footnote omitted).

¹¹² May 31 Statement, *supra* note 3.

¹¹³ *Id.*



OPRF's Assistant Superintendent for Student Learning who presented the "Transformative Education" plan on the implementation of "equitable assessment and grading practices" to the District 200 Board of Education ("District 200 Board") on May 26,¹¹⁴ told the *Wednesday Journal of Oak Park and River Forest* that "equitable grading practices . . . has [sic] nothing to do with race."¹¹⁵

The materials and statements District 200 and OPRF have posted online and otherwise made available to the public regarding its racial equity policies belie OPRF's contention that it does not plan to engage in "race-based grading." The fact that OPRF has carefully avoided using the term "racial equity" in its May 31 statement does not change the fact that Dr. Fiorenza's May 26 presentation to the board abounds with references to the need for "equitable grading practices" – including "utilizing aspects of competency-based grading, eliminating zeros from the grade book, and encouraging and rewarding growth over time."¹¹⁶ It also does not change the fact that these practices are filtered through District 200's "racial equity analysis tool,"¹¹⁷ or that OPRF is formulating these practices based on its view, pursuant to the school's "racial equity" statement referenced in DFI's original complaint, pledging to "eliminat[e] policies, practices, attitudes, and cultural messages that reinforce or fail to eliminate different outcomes by race."¹¹⁸

Furthermore, Dr. Fiorenza's statement that OPRF's plans to reform grading practices have nothing to do with race is simply untenable. As described above, the "Prototype Example" of the "Formative Assessment Analysis Tool" OPRF presented to the District 200 Board on March 10, 2022 permits users to sort data on achievement by racial grouping.¹¹⁹ The same tool includes a "Student Details Table" identifying students by their race.¹²⁰ OPRF's "data strategy plan" for student assessment "intentionally collect[s] and disaggregat[es] data across racial lines"¹²¹ Plans for "equitable grading" are based on OPRF's fundamental policy that "all work of the district should be viewed through the filter of producing more [racially] equitable outcomes for students."¹²² If such policies, plans, and tools are not related to race, it is difficult to envision a policy that is.

¹¹⁴ Strategic Plan, *supra* note 38.

¹¹⁵ *Quoted in Tugade, supra* note 4.

¹¹⁶ Strategic Plan, *supra* note 38, at 9.

¹¹⁷ *Id.* at 10.

¹¹⁸ Racial Equity at OPRF, *supra* note 18.

¹¹⁹ *Supra* note 43.

¹²⁰ *Supra* note 44.

¹²¹ *Supra* note 45.

¹²² *Supra* note 27.



Through these denials, District 200 is attempting, too late, to inoculate its policies “racializing” all significant decisions from scrutiny and criticism. The statements mislead the public, and ultimately the U.S. Department of Education, about OPRF’s use of racial classifications, providing an additional reason why an OCR investigation is necessary.

Accordingly, DFI urges OCR to investigate the allegations in this complaint, as supplemented, and ensure that District 200 complies with Title VI of the Civil Rights Act of 1964, as well as provide other appropriate relief.

Thank you for your prompt assistance. Please feel free to contact me with any questions related to this request.

Sincerely,

Robert Eitel

Robert S. Eitel
President